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In the United States Patent and Trademark Office

Applicants:	Daniel R. Schlinz et al.	Docket No.:	19,043
Serial No.:	10/750,188	T.C./A.U.:	3761
Confirmation No.:	9141	Examiner:	Anderson, Catharine L
Filed:	December 30, 2003	Date:	December 5, 2008
For:	DISPOSABLE ABSORBENT GARMENT INCLUDING A STRETCHABLE CARRIER LAYER		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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BRIEF ON APPEAL (13 pages)

14 total pages, including this page

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For: DISPOSABLE ABSORBENT GARMENT INCLUDING A STRETCHABLE
CARRIER LAYER

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellant respectfully submits this Brief in support of their Appeal of Examiner Anderson's **Final Rejection** of claims 1-18 which was mailed on July 14, 2008

On October 14, 2008, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the filing of this Brief is within the two-month period and is timely.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no other related appeals and/or interferences with regard to the present Application.

Status of Claims

Of original claims 1-18, claims 3-6, 17, and 18 were previously withdrawn. Claims 1, 2, and 7-16 remain in the application and are the subject of this appeal.

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Status of Amendments

No amendments were filed after the final Office Action mailed July 14, 2008.

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a disposable absorbent garment (100) having a longitudinal direction (60) and a lateral direction (70). (See e.g., page 8, lines 6-9). The disposable absorbent garment (100) has a front waist region (30), a back waist region (40) and a crotch region (50) that connects the front waist region (30) and the back waist region (40). (See e.g., page 8, lines 12-14). A waist region (30) width is in the lateral direction (70) and a crotch region (50) width is in the lateral direction (70) and is less than the waist region (30) width. (See e.g., page 8, lines 16-19). The two longitudinal side edges (55) and the disposable absorbent garment (100) have a liquid barrier layer (20) and defines an inner surface (23), an outer surface (25), opposite longitudinal side edges (27) and a liquid barrier layer width (29) between the opposite longitudinal side edges (27) about the crotch region width (555). (See e.g., page 8, lines 26-34 and Figure 2). A stretchable carrier layer (80) extends from the front waist region (30) to the back waist region (40) and is placed in facing relationship with the liquid barrier layer (20). (See e.g., page 9, lines 34-35). The stretchable carrier layer (80) has a width (83) in the waist regions (30, 40) of about the waist region width (300, 400) and a width (85) in the crotch region (50) about the crotch region width (500). (See e.g., page 10, lines 2-5). An elastic layer is attached to the stretchable carrier layer (80). (See e.g., page 10, lines 8-9). The elastic layer (90) has an elastic layer width (93) extending away from a lateral centerline (110) of the disposable absorbent garment (100) in the lateral direction (70) from a liquid barrier layer (20) longitudinal side edge (55) to a disposable absorbent garment (100) longitudinal side edge (55). (See e.g., page 11, lines 28-36). An absorbent section (120) is disposed on the inner surface (23) of the liquid barrier layer (20). (See e.g., page 12, lines 24-26).

Independent claim 13 is directed to a method of making a disposable absorbent garment

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(100). The disposable absorbent garment (100) has a front waist region (30), a back waist region (40), a crotch region (50) that extends between and connects the waist regions (30, 40), a longitudinal direction (60) and a lateral direction (70). See e.g., page 8, lines 6-14 and Figure 1). The method provides a first continuous web. The first continuous web has a stretchable carrier layer (80) and intermittent elastic material segments. (See e.g., page 17, lines 13-14). The stretchable carrier layer (80) extends from one intermittent elastic material segment to the next intermittent elastic material segment in a machine direction. The method provides a second continuous web and the second continuous web has a liquid barrier material (20). The method joins the first continuous web in facing relationship with the second continuous web to form an outer cover web and provides a series of absorbent assemblies and attaches the absorbent assemblies to the outer cover web to form a garment web. The method selectively cuts the garment web into individual garments, generally bisecting the intermittent elastic material segments in the lateral direction (70). (See e.g., page 18, lines 13-21).

Independent claim 15 is directed to a method of making a disposable absorbent garment (100). The disposable absorbent garment (100) has a front waist region (30), a back waist region (40), a crotch region (50) that extends between and connects the waist regions (30, 40), a longitudinal direction (60) and a lateral direction (70). (See e.g., page 8, lines 6-14 and Figure 1). The method provides a first continuous web. The first continuous web has a liquid barrier material and has an outer surface (25) and an inner surface (23). (See e.g., page 19, lines 6-8). The method provides a series of absorbent assemblies and attaches the absorbent assemblies to the inner surface (23) of the first continuous web. The method provides a second continuous web in facing relationship with the inner surface (23) of the first continuous web to form a garment web. (See e.g., page 18, lines 13-16). The second continuous web has a stretchable carrier layer (80) and intermittent elastic material segments. The stretchable carrier layer (80) extends from one intermittent elastic material segment to the next intermittent elastic material in a machine direction. The method selectively cuts the garment web into individual garments, generally bisecting the intermittent elastic material segments in the lateral direction. (See e.g., page 18, lines 16-21).

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Grounds of Rejection to be Reviewed on Appeal**Ground 1**

Claims 1, 2, and 7-16 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over U.S. Patent No. 5,931,825 to Kuen et al. (hereinafter "Kuen") in view of U.S. Patent No. 6,515,029 to Krzysik et al. (hereinafter "Krzysik").

Ground 2

Claims 13-16 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over Kuen in view of Krzysik and further in view of U.S. Patent No. 4, 938,753 to Van Gompel et al. (hereinafter "Van Gompel").

Argument**Ground 1 -- Rejection Of Claims 1-2 and 7-16**

Claims 1-2 and 7-16 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over Kuen in view of Krzysik. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed.

Kuen is directed to dual elastic, liquid barrier containment flaps for a disposable absorbent article. Independent claim 1 of the present application is directed to a disposable absorbent garment including, *inter alia*, a stretchable carrier layer extending from the front waist region to the back waist region and placed in facing relationship with the liquid barrier layer, the stretchable carrier layer having a width in the waist regions of about the waist region width. First, Kuen does not disclose, teach, or suggest that Kuen's outer layer 46 is stretchable as required by claim 1, only that it provides a relatively cloth-like texture. Similarly, Krzysik does not correct this deficiency of Kuen in that Krzysik also does not disclose, teach, or suggest that Krzysik's outer cover 32 is stretchable as required by claim 1. The stretchable carrier layer of the present application allows for a better fit of the absorbent garment.

With respect to the Examiner's comments in paragraph 2 of the "Response to

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Arguments" section of the July 14, 2008 Office Action, Appellants do not specifically rely on an "outer cover being elastically stretchable" as stated by the Examiner. As such, that feature does not need to be "read into the claims." In addition, the Examiner states that the outer cover of Kuen is "fully capable of being stretched when pulled" without citing evidence to that point. This is conjecture on the part of the Examiner and thus cannot form the basis of a proper rejection.

Second, the Examiner has not provided an adequate motivation for combining the cited references. The Examiner posits that one would look to Krzysik to obtain a shape in which the waist is wider than the crotch. But Kuen already has this arrangement, as is apparent from Kuen's Fig. 2, for example. There is no motivation, therefore, to combine the references. Further, in paragraph 3 of the "Response to Arguments" section of the July 14, 2008 Office Action, the Examiner states that the combination of references must come from the references or from the knowledge available to one skilled in the art. The Examiner has not shown where in either reference the combination is taught, suggested, or motivated. In fact, there is nothing in either reference that relates product shape to comfort, as opined by the Examiner. In addition, the Examiner has provided no evidence of knowledge available to one skilled in the art. As a result, any teaching, suggestion, or motivation to combine the references appears to come only from conjecture on the part of the Examiner.

Further, the Examiner provides no basis for rejecting claims 13-16 over Kuen in view of Krzysik.

For at least these reasons, independent claims 1, 13, and 15, and claims 2, 7-12, 14, and 16 that eventually depend therefrom, are patentable.

For at least the reasons stated above, Appellants submit that Kuen in view of Krzysik does not render obvious claims 1-2 and 7-16. Accordingly, Appellants respectfully ask the Examiner to withdraw this rejection.

Ground 2 – Rejection of Claims 13-16

Claims 13-16 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over Kuen in view of Krzysik and further in view of Van Gompel. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed.

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Kuen in view of Krzysik and Van Gompel does not disclose, teach, or suggest all Appellants' claim limitations. Claims 13 and 15 are each directed to a method of making a disposable absorbent garment including, *inter alia*, a continuous web comprising a stretchable carrier layer. Kuen does not disclose, teach, or suggest that Kuen's outer layer 46 is stretchable as required by claims 13 and 15, only that it provides a relatively cloth-like texture. Similarly, Krzysik does not correct this deficiency of Kuen in that Krzysik also does not disclose, teach, or suggest that Krzysik's outer cover 32 is stretchable as required by claims 13 and 15. Finally, Van Gompel does not correct the deficiencies of Kuen and Krzysik at least in that Van Gompel does not provide a disposable absorbent garment including a stretchable carrier layer as required by claims 13 and 15. The stretchable carrier layer of the present application allows for a better fit of the absorbent garment.

As stated above, and with respect to the Examiner's comments in paragraph 2 of the "Response to Arguments" section of the July 14, 2008 Office Action, Appellants do not specifically rely on an "outer cover being elastically stretchable" as stated by the Examiner. As such, that feature does not need to be "read into the claims." In addition, the Examiner states that the outer cover of Kuen is "fully capable of being stretched when pulled" without citing evidence to that point. This is conjecture on the part of the Examiner and thus cannot form the basis of a proper rejection.

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